

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY BANGKOK

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E. O. 11652: GDS

TAGS: ELAB, EIND, TH

SUBJECT: ALIEN BUSINESS AND ALIEN OCCUPATION DECREES

REF: BANGKOK 8911

1. AS PREVIOUSLY INDICATED, DEPT LEGAL VIEW IS THAT U. S. BUSINESSMAN, WHILE HE MAY CHOOSE VOLUNTARILY NOT TO EXERCISE RIGHTS GUARANTEED TO HIM BY AER TREATY, MAY NOT WAIVE RIGHT TO INVOKE PROTECTIONS OF TREATY. WE HAVE NEVER AGREED THAT ACT OF REGISTRATION, WHICH RTG ACKNOWLEDGES WAS NOT REQUIRED BY U. S. INVESTORS DURING LIFE OF TREATY, COULD IN ANY WAY AFFECT RIGHTS OF INVESTORS UNDER TREATY. REGISTRATION BY U. S. INVESTORS SHOULD BE REGARDED AS CONVENIENCE BOTH FOR INVESTOR AND FOR RTG.

2. U. S. FIRMLY REJECTS PRAYOON CONTENTION THAT ITS NATIONALS MAY BE PRESUMED TO HAVE WAIVED TREATY PROTECTION THROUGH ACT OF REGISTRATION. WHILE REGISTRATION REQUIREMENT IS DISCRIMINATORY, AND THUS PRESUMABLY COULD NOT BE

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REQUIRED OF U. S. INVESTORS UNDER TREATY, FACT THAT U. S. INVESTOR HAS COMPLIED WITH THIS REQUIREMENT MAY IN NO WAY BE VIEWED AS EVIDENCE OF INTENT TO COMPLY WITH OTHER, MORE ONEROUS, DISCRIMINATORY REQUIREMENTS.

3. DEPT VIEW IS, THEN, THAT EXTENT TO WHICH U. S. INVESTORS COMPLY WITH DISCRIMINATORY REQUIREMENTS OF ABD IS MATTER

OF INVESTOR'S OWN CHOICE DURING LIFE OF TREATY.

4. FOLLOWING POSSIBLE TERMINATION OF TREATY, OF COURSE, U. S. INVESTORS WILL HAVE NO PROTECTION AGAINST TERMS OF DECREE; RTG, HOWEVER, HAS INTEREST IN PRESERVING FAVORABLE INVESTMENT CLIMATE IN THAILAND, AND THUS MUST CONSIDER WHAT TREATMENT IT IS WILLING TO EXTEND TO U. S. INVESTORS EVEN IN THE ABSENCE OF A TREATY OBLIGATION.

5. EMBASSY SHOULD THEREFORE KEEP IN MIND THAT OBJECTIVE IS TO SECURE MFN RIGHTS FOR U. S. INVESTORS AFTER EXPIRATION OF TREATY WITHOUT PERMITTING ENCROACHMENT ON RIGHTS OBTAINED UNDER TREATY DURING PERIOD OF ITS LIFE. WHILE WE CANNOT RELY ON LEGAL RIGHTS AFTER EXPIRATION DATE OF TREATY, WE CAN AND SHOULD RELY ON FACT OF EXISTENCE IN U. S. OF DEVELOPMENT CAPITAL WHICH CAN BE ATTRACTED BY COUNTRIES MAINTAINING FAVORABLE INVESTMENT CLIMATE.

6. EMBASSY SHOULD SEEK ASSURANCES THAT U. S. INVESTORS WILL NOT BE DISADVANTAGED FOLLOWING EXPIRATION OF TREATY AND SHOULD INDICATE THAT IT IS WILLING TO ENCOURAGE U. S. INVESTORS TO COMPLY WITH REGISTRATION AND OTHER REQUIREMENTS OF ABD WHICH DO NOT AFFECT THEIR RIGHTS OF OWNERSHIP AND CONTROL OF ENTERPRISES. ROGERS

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